

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF

S. H.

PETITIONER,

VS.

No. 04-07

GIBSON COUNTY  
SCHOOLS,

RESPONDENT.

## OPINION

### Background Information

This cause came on to be heard on March 30, 2004 before the Honorable Richard Walker Administrative Law Judge for the Department of Education, Special Education Division, State of Tennessee.

The child is an 11<sup>th</sup> grade student in the Gibson County Special School District who is learning disabled in reading and written expression and also has a history of Attention Deficit Hyperactive Disorder. The child has been receiving benefits through the school system since the third grade. On November 15, 2003 the child became eighteen years of age.

On or about December 3, 2003 an incident occurred at school involving the child's girlfriend and another student. A fight occurred between these two students and a school coach had to physically restrain the students. The child became involved when he requested that the coach release his girlfriend. Apparently comments were exchanged between the child and the coach. Ultimately the child used profanity, made threatening gestures toward the coach by taking off his coat and moving towards him.

The Multi-Disciplinary Team (M-Team) met on December 11, 2003 and determined that the conduct was a manifestation of his disability. The M-Team recommended that the child be placed in alternative school for 45 days in order to deal with his anger.

The child and mother being displeased with the recommendations of the M-Team left the meeting. The child indicated that he would quit if he had to attend 45 days of alternative school and the mother indicated that they would seek another school system to attend. The child came back to school approximately 22 days later.

This due process case was filed on January 27, 2004 invoking a stay put rule and alleging that the proposed placement violates the child's right to a free appropriate public education. In addition, the Petitioner contends that the child's procedural rights have been violated under the Individuals With Disabilities Educational Act (IDEA).

The school system contends that the proposed placement is appropriate and that procedural safeguards were complied with in this case.

### Issues

1. Whether the child received a free appropriate public education.
2. Whether the school system followed proper procedures based on 20 U.S.C. 1415.

### Findings of Fact and Conclusions of Law

The primary issue in this case is whether the child has received a free appropriate public education that confers an educational benefit to the child as required in Board of Education v. Rowley, 458 U.S. 176 (1982). The school system must additionally make the child's placement in the least restrictive environment as set forth in 20 U.S.C. 1412. That section states that "removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplemental aids and services cannot be achieved satisfactorily."

The M-Team proposed 45 days of alternative school for this child to deal with behavioral problems related to anger. The child has had a long history of behavioral problem according to the testimony and from review of cumulative Exhibits 1 and 2.

When the child began high school he had several instances of fighting and inappropriate behavior for which he was punished. However, as the child has aged the behavioral problems have been less frequent. The school system contends that even though the problems are less frequent the severity of the problems have increased. The instances occurring over the course of the last

year all seem to be related to the protection of some other person or if the child is threatened himself. There has only been one minor incident since the stay-put has been in effect.

There is a long discipline record contained in the administrative record of the school with very little counseling offered by anyone over the course of the last 8 years. It is not clear from the psychological evaluations whether the child's full history was known prior to the evaluations and there is little guidance offered by the reports. The Court concludes that these records were not provided prior to the evaluations and if the child had been receiving counseling the outcome could have been different.

Although the Director of the alternative school testified that the program could assist this child in dealing with and controlling anger, he admits that the staff does not include a special education teacher on site. Furthermore, they do not have certificates to teach English for the upcoming Gateway exam scheduled in May which this child missed in December of last year after leaving the meeting.

As a result of the aforementioned proof the Court finds that 45 days of alternative school would be an inappropriate placement at this time and would not be the least restrictive environment for this child.

The Court further finds that the child should be evaluated and receive counseling as recommended by a psychologist.

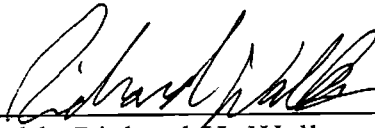
The second issue concerns procedural violations alleged by the Plaintiff. In 20 U.S.C. 1415 procedural safeguards are set forth in order to offer a child a free appropriate public education. Subsection B(3) of this section states that written prior notice should be sent to the parents if the agency or school system intends to change placement of a child. This statute requires a written notice in order for the parent or child to be prepared for the potential change of placement. This in turn allows the parent time to review the record or obtain independent evaluations which might be necessary.

It is clear, from the proof, that the special education teacher did not notify the child or parent of the meeting in writing. The teacher did indicate that a written notice was usually sent prior to the meeting although in this particular case it was set by phone.

Once a procedural violation is proven then the burden shifts to the school system to prove that the violation was a harmless error and resulted in no damage to the child. The school system has not carried its burden of proof on this issue.

### Summary

The child is the prevailing party in this case. The school system is ordered to provide a psychological evaluation consistent with this opinion. A full history of the child's background shall be provided to the person evaluating this child. Upon completion of said evaluation another M-Team meeting shall be held to develop an appropriate educational plan for the child.



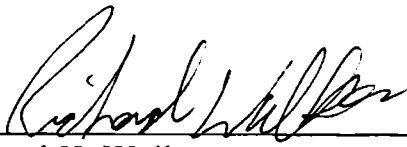
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Honorable Richard H. Walker  
Administrative Law Judge  
Tennessee Department of Education



Certificate of Service

I, Richard H. Walker, on this the 22<sup>nd</sup> day of April, 2004 do hereby certify that I have forwarded a copy of the foregoing Opinion to Marcella G. Fletcher, 17 Brentshire Square, A-2, P.O. Box 12556, Jackson, TN 38308 and Mr. Bill R. Barron, 124 E. Court Square, Trenton, TN 38382 by placing same in the United States Mail postage being fully prepaid.

  
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Richard H. Walker  
Administrative Law Judge  
Tennessee Department of Education